IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No. 10 of 2004

Judgment reserved on: May 10, 2007

Decided on : June 1, 2007.

Satish Kumar & another **.....Appellants.**

VERSUS

State of H.P. **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?

For the Appellant **:** **Mr. Lalit Sharma, Advocate.**

For the Respondent **:** **Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.**

Surjit Singh, Judge

Initially, the appeal was filed by two appellants, i.e. Satish Kumar and Shakuntla Devi. Now Shakuntla Devi is dead.

2. Appellant Satish Kumar is aggrieved by the judgment of the trial Court (Sessions Court) whereby he has been convicted of offence under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/- and further imprisonment for one year for offence under Section 201 read with Section 34 IPC. Appellant, alongwith his mother Shankutla Devi, was put on trial for murdering his father Shri Prem Chand on the night intervening 3rd and 4th April, 2002 at his (deceased's) house in village Karera, Tehsil Khudian District Kangra, H.P.

Whether the reporters of the local papers may be allowed to see the Judgment?

3. Prosecution version, as per record, is as follows. Deceased Prem Chand had not been having cordial relations with his wife Shakuntla Devi. About 12-13 years back Shakuntla Devi alongwith her children, i.e. appellant Satish Kumar, another son Bhuru Singh @ Suresh and daughter Santosh Kumari had been turned out of the matrimonial home. The reason for acrimony was that the deceased had been keeping a lady, named Amro Devi, at his place and was having illicit relations with her. Shakuntla filed a petition, under Section 125 Cr.P.C., in the Court for Judicial Magistrate 1st Class, Dehra, against the deceased. On 3rd April, 2002, the petition was listed for hearing. Shankuntla, deceased appellant, went to attend the Court. The deceased (Prem Chand) also attended the Court proceedings. On the next day, i.e. 4th April, 2002, Prem Chand was found dead on a cot in his house. Bhuru @ Suresh, brother of appellant Satish Kumar, informed about the death of his father (deceased Prem Chand) to a lady named Kanta Devi (PW-4), who runs a shop at a place called Dalghatta. He gave this information sometime after 11 a.m. Kanta Devi (PW-4) had seen Jagan Singh, Balwant Singh, Om Parkash and Gurdas Ram boarding a bus at Dalghatta. Jagan Singh is one of the brothers of the deceased. The bus was bound for a place called Majheen. Therefore, Kanta Devi rang up an STD booth owner to inform Jagan Singh PW-3, a brother of Prem Chand, about his (Prem Chand's) death. The STD owner got her connected with PW-5 Balwant Singh, who alongwith other persons and Jagan Singh, had boarded the bus at Dalghatta. The lady informed Balwant Singh (PW-5) about the information passed on to her by Bhuru @ Suresh, one of the sons of the deceased. Balwant Singh informed PW-3 Jagan Singh. Thereafter, all the four, who travelled by the bus, namely PW-3 Jagan Singh, PW-5 Balwant Singh, PW-6 Gurdas Ram

and Om Parkash, went to village Karera. On reaching the house of deceased, they found appellant Satish Kumar and deceased appellant Shakuntla Devi in the courtyard. Jagan Singh enquired from Shakuntla as to where the deceased was. She told him that he was asleep in the room. Jagan Singh accompanied by Gurdas Ram, Balwant Singh and Om Parkash then went inside the room. Prem Chand was lying on a cot covered with a bed sheet. On removing the bed sheet, Jagan Singh found that Prem Chand was dead. He then locked the room from outside and asked Shakuntla as to how Prem Chand had died. She and the present appellant told that they happened to commit the mistake and fell on the feet of Jagan Singh begging for being helped in escaping punishment. Jagan Singh then went to Village Bharoli where SHO, Police Station Jawalamukhi had gone to provide security to a visiting Minister. Jagan Singh informed the SHO about the incident. The SHO recorded the statement of Jagan Singh, under Section 154 Cr.P.C (Ex. PW-3/A) and sent it to the Police Station for the formal registration of the case. Police then visited the spot. Inquest was conducted. Various injuries were noticed on the dead body. The injuries were entered in the inquest forms. Dead body was dispatched to the hospital for postmortem examination. The doctor noticed the following injuries on the dead body:

1. Multiple abrasions on both knee joints antero lateral aspect of left thy, left leg, and left side of abdominal wall.

2. Black staming on left eye.

3. Lacerated wound vertical on scalp in midline situated 6 cm above hair line 5cm X 3cm. Bone exposed.

4. Lacerated wound 5cm X 3cm forming L with injury No.3. Bone exposed.

5. Lacerated wound 6cm X 3cm above right temporal bone exposed.

6. Lacerated wound 5cm X 3cm posterior to injury No.5. Bone exposed.

7. Lacerated wound 5cm X 3cm, 2cm behind injury No.6. Bone exposed.

8. Lacerated wound 8cm X 5cm irregular in inter parietal region. Bone exposed. Bone pieces palpable through the wound.

9. Lacerated wound 5cm X 3 cm, 2 cm right of injury No.6 Bone exposed.

Cause of death was opined to be shock due to injury to the brain and meninges. Postmortem was conducted on 5.4.2002 at 10.30 a.m. The probable time lag between the death and postmortem was opined to be 18 to 48 hours. No opinion was expressed about the time lag between the sustainance of the injuries and the death and the same was reported to be unascertainable. Appellant Satish Kumar was also got medically examined. Swelling and tenderness on the base of the left thumb on palmer aspect over an area 5cm X 4cm was noticed. Appellant complained of the pain in left knee but no external injury was found.

4. PW-9 Nirmala Devi, wife of PW-3 Jagan Singh, allegedly saw the incident. PW-11 Bhuru @ Suresh, a brother of the appellant, was also alleged to have seen the occurrence. Both of them, however, did not support the prosecution version during trial. Deceased appellant and appellant Satish were present in the courtyard of the deceased when PW-3 Jagan Singh, PW-5 Balwant Singh and PW-6 Gurdas Ram reached there on getting the

information from PW-4 Kanta Devi about the death of Prem Chand. Appellant Satish Kumar, as also deceased appellant Shankuntla, made extra-judicial confession to PW-3 Jagan Singh in the presence of PW-5 Balwant Singh and PW-6 Gurdas Ram. Appellant's plea was that he had no knowledge about the death. He and his deceased mother Shakuntla pleaded that they were not in the house of the deceased on the relevant night as they having been turned out of the house some 14-15 years back, had been living at Shakuntla's brother's place, which is far away from the house of the deceased and thus they had no opportunity of committing the crime. They also pleaded that they could not have gained anything by killing the deceased nor did they have any motive to kill him.

5. Appellants have been convicted on the basis of circumstantial evidence. The circumstances, which have weighed with the trial Court to hold appellant Satish Kumar and his mother Shakuntla guilty are:

(a) appellants and the deceased on inimical terms,

(b) injury found below the thumb on the palmer aspect of the left hand of the accused,

(c) falsity of the plea as to the cause of the injury,

(d) appellants had been living with the deceased for the last three months,

(e) deceased appellant Shankuntla produced clothes of appellant Satish Kumar, which she had washed on the night of the incident and which, according to the report of the Forensic Science Laboratory, bore the stains of human blood,

(f) cries of Prem Chand were heard by PW-7 Vikaramjeet and soon thereafter the volume of the record player available in the house of the deceased rose.

6. It has been submitted by the learned counsel for appellant Satish Kumar that neither the circumstances relied upon by the trial Court to convict the appellants are proved beyond reasonable doubt nor do they make a complete chain. He also submitted that the circumstances, if they be assumed to have been proved, do not lead to one and only one hypothesis that the appellant Satish Kumar and deceased appellant Shakuntla are responsible for causing the death of deceased Prem Chand.

7. First, we proceed to examine the submission whether circumstances relied upon by the trial Court stand fully established or not.

8. Trial Court has found that the appellants were on inimical terms with the deceased and thus there was a motive for the killing of the deceased by them. It has been held by the trial Court that deceased-appellant Shakuntla alongwith her children, i.e. appellant Satish Kumar, his brother and a sister, had been turned out of the matrimonial home about 13-14 years back and in place of deceased appellant Shakuntla, the deceased had brought another lady, named Amro Devi, whom he kept as his concubine. Another reason of enmity has been held to be the investment of some amount of money by the deceased in the name of a son of Gurdas Ram and this investment was allegedly made because of the deceased having illicit relations with the wife of Gurdas Ram.

9. It is true that deceased appellant Shakuntla Devi and her children had been thrown out of the matrimonial home and she alongwith her children started living at her brother's place. The fact is proved not only by the evidence adduced by the prosecution but is also stated by the appellants in their statements, under Section 313 Cr.P.C., in answer to Question No.29. However, this in our considered view could not have been a motive for the killing of the deceased by the appellants. Appellants had been turned out of the matrimonial home long back, i.e. 14-15 years prior to the incident. Therefore, this cannot be said to be a reason for killing the deceased. Not only this, it has been stated by a witness of the prosecution itself, namely PW-3 Jagan Singh, that on the day preceding the day on which deceased was found dead, he had seen the deceased and his son Satish walking side by side and talking to each other in a nice manner. This suggests that despite the appellants having been turned out by the deceased from his house their relations were not so bitter that the appellants would have thought of killing him. Furthermore, deceased appellant Shankuntla had filed a petition for claiming maintenance against the deceased and by killing or getting him killed she could not have gained anything. Rather with the death of the deceased she would have lost the chances of getting maintenance from him.

10. Amro Devi was allegedly brought in as a keep by the deceased at the time when Shankuntla, deceased appellant, was turned out. According to the prosecution's own version, at the time when the incident took place Amro Devi had ceased to reside in the deceased's house and had shifted to her old house situated close to

the house of the deceased, per testimony of PW-3 Jagan Singh and also PW-7 Vikramjeet, a son-in-law of Amro Devi. Now, when Amro Devi had ceased to live in the house of the deceased, the appellants were supposed to have rather cooled down even if they were angry at some point of time. Thus, the keeping of Amro Devi in his house by the deceased (in the past) could also not have been a motive for the killing of the deceased by the appellants. This could have been a motive at the time when Amro Devi was actually residing at the deceased's place and not when she had ceased to reside there.

11. It was also submitted that deceased Prem Chand deposited certain amount of money and nominated a son of PW-6 Gurdas Ram as the person entitled to receive that money and this he did because he was having illicit relations with the wife of PW-6 Gurdas Ram. The submission that the deceased was having illicit relations with Gurdas Ram's wife is not borne out from the evidence on record. However, Gurdas Ram has admitted that the deceased had deposited some amount of money and his son was appointed as nominee to receive that money. The proof of this fact alone is not sufficient to prove the allegation that this was the motive for killing the deceased by the appellants. In fact, there is no evidence on record suggesting that the appellants were aware that the deceased had deposited any amount of money and nominated the son of PW-6 Gurdas Ram as the person who would be receiving the money in the case of his dying before the maturity of deposit. Thus, it cannot be said that the appellants had any motive to kill the deceased or they were on inimical terms with him.

12. It stands proved by the testimony of PW-2 Dr. K.K. Rattan, who conducted medico legal examination of appellant Satish Kumar, on the application Ex. PW-2/A submitted by the SHO that this appellant was having swelling and tenderness on the base of the left thumb on the palmer aspect in an area 5cm X 4cm with no colour change in the skin and that appellant Satish Kumar told the doctor that he had received the injury in a quarrel with his father. The duration of the injuries, according to PW-2 Dr. K.K. Rattan, was within two days. The medical examination was conducted on 5.4.2002 at 6.05 p.m. The incident is alleged to have taken place on the night intervening 3rd and 4th April, 2002 around 11 p.m. Explanation offered by appellant Satish Kumar for the injury, in his statement under Section 313 Cr.P.C., is that he was beaten up by the police and then got medically examined. The doctor on being asked by the prosecution whether the injury could have been sustained by appellant Satish Kumar while hitting someone with a *Danda* in his hand, stated that it could have been. Learned Additional Advocate General submitted that the doctor's opinion proves that appellant Satish Kumar sustained the injury on the palmer side of the base of the thumb of the left hand while giving beating to his father with a *Danda*. In the cross-examination, the doctor admitted that the injury could have been sustained as a result of striking with a *Danda* on the palm. The admission of this suggestion when seen in the light of the explanation of appellant Satish Kumar, as noticed above, indicates that the injury might have been sustained by him on being beaten up by the Police while in custody. This is particularly so when the injury was only on the palmer side of the left hand and not on any part of

the palmer side of the right hand, though the people are generally right-hander. Thus, circumstance (b) does not stand established to the hilt.

13. In view of the finding that the explanation offered by appellant Satish Kumar with regard to the injury found on the palmer aspect of his left hand, it cannot be said that his plea with regard to the cause of injury is false. Hence, circumstance (c) can also not be said to be fully established.

14. The evidence with respect to the allegation that the appellants, including deceased appellant Shakuntla, had been living with the deceased for the last three months, is doubtful. Some of the prosecution witnesses have stated that the appellants had been living with the deceased when the incident took place, some others have stated that they were living at deceased appellant's brother's place, which is at a considerable distance. PW-3 Jagan Singh, a brother of the deceased, no doubt stated that the appellants had been living at deceased's place when the incident took place, but at the same time he stated that the appellants had been living at Shakuntla Devi's parents' place. He stated that he had visited the village where the deceased lived on getting the information about the death of his brother Prem Chand, after about one and a half month. In view of this admission, it cannot be said that the witness has any personal knowledge that the appellants were residing at the house of the deceased at the time of the commission of the offence. PW-4 Kanta Devi categorically stated that deceased appellant Shakuntla Devi and her sons used to reside at her father's place. To the similar effect is the statement of PW-5 Balwant Singh. PW-6 Gurdas Ram though

stated that at the time of the occurrence the appellants were residing with the deceased, at the same time he stated that he had his residence at a distance of 1½ km. He is resident of village Dal whereas the deceased used to live in village Karera.

15. PW-7 Vikramjit Singh, a son-in-law, of Amro Devi with whom the deceased was having illicit relations, stated that on the evening of 3rd April, 2002 he went to village Karera where his mother-in-law lives. He further stated that while he was going to the house of his mother-in-law Amro Devi he passed by the house of deceased where Shakuntla, her daughter Santosh and son Satish (appellant) were present and that Shakuntla enquired about his well being and asked her to take tea. The statement of witness cannot be believed without corroboration for a number of reasons. First, he is the son-in-law of Amro Devi with whom deceased Prem Chand was having illicit relations and for maintaining and keeping which relations, deceased had turned deceased appellant Shakuntla out the matrimonial home. Secondly, the statement is self-contradictory. At one stage he says that the daughter of deceased appellant Shakuntla was also there, at another stage he stated that she was not there. Also, he was cross-examined with the leave of the Court by the prosecution, because he did not stick to the entire version given to the Police under Section 161 Cr.P.C. Then he is not a resident of village Karera.

16. PW-8 Jagat Ram categorically stated that deceased appellant Shakuntla alongwith her children (including appellant Satish Kumar) had been living at her parents' house for the last so many years, because deceased Prem Chand had turned her out of the matrimonial home. There is no reason to disbelieve the testimony of

the witness. PW-9 Nirmala Devi stated that for the last 12 years the appellants had been living at deceased appellant Shakuntla Devi's parents' place and not with deceased Prem Chand. No witness from village Karera has stated that deceased appellant Shakuntla and appellant Satish Kumar were there in village Karera on the night of 3rd and 4th April, 2002. Only a visitor to the village, who as demonstrated hereinabove, is not trustworthy, has stated that he saw deceased appellant Shakuntla and Satish Kumar appellant at the house of deceased Prem Chand on the evening of 3rd April, 2002. Thus, circumstance (d) can also not be stated to have been proved beyond reasonable doubt.

17. Prosecution examined two witnesses, namely PW-8 Jagat Ram and PW-22 Jagdish Chand, Inspector/SHO, to prove the production of a pant and a T-shirt, Ex.P-8 and Ex.P-9, respectively, by deceased appellant Shakuntla. PW-8 Jagat Ram stated that these clothes were produced by Shakuntla and taken into possession vide Memo. Ex. PW-8/B and that she stated that the clothes belonged to Satish and she had washed the same on the night intervening 3rd and 4th April, 2002 to remove the stains of blood. PW-22 Inspector Jagdish Chand stated that pant Ex. P-8 and shirt Ex. P-9 were produced by Shakuntla, deceased appellant, and she said that the same belonged to appellant Satish and she had washed them in the night intervening 3rd and 4th April, 2002, as they bore stains of blood. These clothes were sent to the Chemical Examiner, who vide report Ex. PA reported that the same had stains of human blood but on further testing the blood group could not be determined. Prosecution, however, did not lead any evidence to show that the pant Ex. P-8 and

shirt Ex. P-9 in fact belong to appellant Satish Kumar. None of the witnesses examined by the prosecution has stated that appellant Satish Kumar was seen wearing the pant and the T-shirt, Ex.P-8 and Ex. P-9, respectively, at any point of time, leave alone on the evening of 3rd April, 2002. Even PW-7 Vikramjit, who claimed to have seen appellant Satish Kumar at the house of deceased Prem Chand around 6.30 p.m. on 3rd April,2002, did not say that appellant Satish Kumar was wearing the aforesaid pant and shirt.

18. Moreover, the story regarding production of clothes by Shakuntla Devi does not inspire confidence. PW-8 Jagat Ram stated that Shakuntla Devi had produced the clothes of appellant Satish Kumar as also those of deceased Prem Chand and had stated that she had cleaned those clothes in the night. But, according to the statement of PW-21 ASI Jeet Singh, clothes of deceased Prem Chand, i.e. shirt Ex. P-12, Pyjama Ex.P-13, vest Ex. P-14 and underwear Ex. P-15, had been produced by Suresh Kumar, another son of deceased appellant Shakuntla, on 7.4.2002, and he took the same into possession vide Memo. Ex. PW-13/A. This contradiction makes the story regarding production of clothes, Ex. P-8 and Ex. P-9, by deceased appellant Shakuntla itself doubtful. For the foregoing reasons, circumstance (e) can also not be said to have been satisfactorily proved.

19. As regards circumstance (f), it is only PW-7 Vikramjit Singh, a chance witness (who claims to have been present in the house of Amro Devi on the relevant night), who testifies to have heard the cries of the deceased. As already demonstrated, the witness is not believable. Nobody else from the village has come forward to say

that the cries of the deceased were heard. In any case, the hearing of the cries of the deceased by PW-7 Vikarmjit is not a circumstance connecting the appellants with the killing of deceased Prem Chand.

20. Learned Additional Advocate General submitted that appellant Satish Kumar and deceased appellant Shakuntla Devi had made extra judicial confession to PW-3 Jagan Singh in the presence of PW-5 Balwant Singh and PW-6 Gurdas Ram. It is only PW-3 Jagan Singh, the brother of the deceased, who testified that Shakuntla and appellant Satish Kumar, on being asked as to how Prem Chand had died, stated that they happened to commit the mistake and that they fell on his feet and begged to be pardoned. Three other witnesses do not support him on the point. They have denied that anything of this type happened or that the appellants made any confession. Not only this, Jagan Singh is contradicted by the earliest version on this point. It may be recalled that it was he who made the statement, under Section 154 Cr.P.C., on the basis of which the case was formally registered. This statement was made by him after the appellants allegedly confessed to the commission of the murder. However, in the statement, which is Ex. PW-3/A, not only that there is no mention of this alleged extra judicial confession but an overall reading of the statement suggests that no such confession was made, because it is recorded in the statement that on enquiry from the villagers the lodger of the report came to know from Makhan Singh and Vikramjit Singh (PW-7) that on the previous night the cries (*Bachao-Bachao*) erupting from the house of Prem Chand were heard and that soon thereafter volume of tape-recorder, which was already playing, had increased. He was duly confronted with this statement,

Ex. PW-3/A. He could offer no satisfactory explanation for the omission of this material particular in the said statement. Thus, he is contradicted by his own statement, i.e. the statement on which the FIR is founded. Trial Court has also not believed the prosecution plea of extra judicial confession. For all these reasons, the submission of the learned Additional Advocate General that the appellants made extra judicial confession is rejected.

21. As a result of the above discussion and findings, we hold that the charge against appellant Satish Kumar and deceased appellant Shakuntla Devi does not stand proved beyond reasonable doubt. Hence, the appeal is accepted, the judgment of the trial Court convicting and sentencing the appellants, including the deceased appellant Shakuntla Devi, for offence under Sections 302 and 201, read with Section 34 IPC, is set aside and the appellants are acquitted. Appellant Satish Kumar, being in jail, is ordered to be set at liberty forthwith, if his detention is not required in any other case.

22. Appeal stands disposed of.

(Surjit Singh), J.

June 1, 2007(sd) **(Sanjay Karol), J.**